

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Stephen DiFiore	Team: Squad #5	CCRB Case #: 202003696	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/30/2020 4:01 PM	Location of Incident: Parkside Avenue and Ocean Avenue	Precinct: 70	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Sun, 05/31/2020 1:53 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 05/31/2020 1:53 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. CPT Vitaliy Zelikov	00000	936353	070 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Jennifer Lopez	16700	960828	070 PCT
2. POF Dayanna Lopez	18068	966673	070 PCT
3. POM Thomas Gallina	17250	966584	070 PCT
4. POM Arthur Saroff	00859	961246	070 PCT
5. POM Elvin Vargas	04453	942886	070 PCT
6. SGT Jerry Sukhnandan	02300	940778	070 PCT
7. LT William Cusack	00000	915539	070 PCT
8. POM Tarik Haywood	14154	960648	070 PCT
9. POM David Walker	08040	948157	070 PCT

Officer(s)	Allegation	Investigator Recommendation
A.CPT Vitaliy Zelikov	Force: Captain Vitaliy Zelikov used physical force against § 87(2)(b)	
B.CPT Vitaliy Zelikov	Discourtesy: Captain Vitaliy Zelikov acted discourteously toward § 87(2)(b)	

Case Summary

On May 31, 2020, § 87(2)(b) filed this complaint on the CCRB website.

On May 30, 2020, at approximately 4:01 p.m., § 87(2)(b) was at a Black Lives Matter demonstration near Parkside Avenue and Ocean Avenue in Brooklyn. While at the protest, she noticed a group of officers not wearing masks. When she approached them to ask them to put masks on, Captain Vitaliy Zelikov of the 70th Precinct approached her and bumped her backwards with his body (**Allegation A: Force**, § 87(2)(g)). Captain Zelikov removed his mask from his chin, neared to within a few inches of § 87(2)(b)'s face, and told her, "Don't go near my men" (**Allegation B: Discourtesy**, § 87(2)(g)).

The investigation did not obtain video footage of the incident. The nature of the incident did not require the use of BWC as per the Patrol Guide.

Findings and Recommendations

Allegation (A) Force: Captain Vitaliy Zelikov used physical force against § 87(2)(b)

Allegation (B) Discourtesy: Captain Vitaliy Zelikov acted discourteously toward § 87(2)(b)

§ 87(2)(b) recounted in her CCRB interview that when she noticed a group of officers who were not wearing masks, she approached them and asked them to put their masks on (Board Review 01). The officers largely ignored her request. § 87(2)(b) photographed the officers. Capt. Zelikov was wearing his mask around his neck, and § 87(2)(b) also asked him if he would put his mask on. § 87(2)(b) was approximately six feet away from Capt. Zelikov at the time. Upon being asked by § 87(2)(b) to put his mask on, Capt. Zelikov took his mask off completely and approached § 87(2)(b) causing her to take a couple of steps backward. Capt. Zelikov continued walking toward her such that he pushed her backward slightly with his body. Capt. Zelikov neared to about an inch from § 87(2)(b)'s face and said that he would not put his mask on. § 87(2)(b) asked, "Did you just touch me?" Capt. Zelikov told § 87(2)(b) in sum and substance, "Don't go near my men." In a later email, § 87(2)(b) recounted that Capt. Zelikov yelled that she should not "go behind his men" (Board Review 02). A few civilians approached § 87(2)(b) to see if she was all right before she left the scene.

§ 87(2)(b) reported to the investigation that she decided to file a complaint about the incident after seeing news coverage containing photographs of Capt. Zelikov appearing to threaten protesters with pepper spray.

§ 87(2)(b)'s photographs show Capt. Zelikov, PO Dayanna Lopez, PO Thomas Gallina, Sgt. Jerry Sukhanandan, and PO Arthur Saroff of the 70th Precinct at the incident location and not wearing masks (Board Review 03). Two of the photos were shot from within a few feet of Capt. Zelikov: one shows him looking directly at the camera, and the other shows him holding a cellphone up to his ear. His mask is pulled down below his chin in the photos.

Capt. Zelikov testified that he did not recall anyone asking him why he was not wearing a mask during the protest, and he did not recall any conversations about masks (Board Review 04). He knew that he spoke with a variety of people in the vicinity of the incident location, but he said that none of the conversations was particularly notable. He recalled that civilians made antagonizing comments about the police to him, but he could not recall any specific statements. He did not recognize a photograph of § 87(2)(b) but he noted that he would not have recognized her if she was wearing a mask. He viewed § 87(2)(b)'s photographs and confirmed his identity in the two photographs of himself. The photographs did not otherwise refresh his recollection. He denied that he made bodily contact with anyone in response to comments about his mask, and he denied that he told any civilian not to go near his officers.

The investigation interviewed Sgt. Sukhnandan (Board Review 05), PO Thomas Gallina

(Board Review 06), PO Dayanna Lopez (Board Review 07), PO Jennifer Lopez (Board Review 08), PO Arthur Saroff (Board Review 09), PO Elvin Vargas (Board Review 10), PO Tarik Haywood (Board Review 11), and PO David Walker (Board Review 12). Only PO Gallina and PO Haywood recalled seeing Capt. Zelikov at the incident location; the remaining officers either did not recall seeing him until later in the protest or did not recall seeing him at all that day. None of the officers recounted seeing § 87(2)(b)'s interaction with Capt. Zelikov, and none recognized a photograph of her (Board Review 13) or recalled her interacting with officers at the incident location. Sgt. Sukhnandan recalled protesters generally making comments about officers not wearing masks, but neither he nor any of the other officers specifically recalled a civilian approaching them at the incident location and asking why they were not wearing masks. PO Saroff and PO Dayanna Lopez testified that they were wearing masks during the protest, but § 87(2)(b)'s photographs included images of both officers not wearing masks.

§ 87(2)(b), § 87(2)(g)

As this incident occurred during the coronavirus pandemic, the allegation that Capt. Zelikov took off his mask while intentionally entering § 87(2)(b)'s personal space to speak to her about her request that officers wear masks has been pleaded as a discourteous action.

According to Patrol Guide Procedure 221-01, “any application or use of force must be reasonable under the circumstances” (Board Review 14).

The NYPD’s mission statement, contained in Patrol Guide Procedure 200-02 (Board Review 15), includes “treating every citizen with compassion, courtesy, professionalism, and respect.” The NYPD “pledge[s]” to “respect the dignity of each individual and render our services with courtesy and civility.” Patrol Guide Procedure 203-09 states that officers must “interact with members of the public in a professional manner” (Board Review 16).

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been a party (Board Review 17).
- Capt. Vitaliy Zelikov has been a member of service for 15 years and has been a subject in 17 prior complaints and 48 other allegations, three of which were substantiated:
 - 201103208 contained a substantiated allegation of premises entered/searched against Capt. Zelikov. The Board recommended Charges, but NYPD took no disciplinary action.
 - 201503516 contained substantiated allegations of a stop and of the use of a nonlethal restraining device against Capt. Zelikov. The Board recommended Command Discipline A, but the NYPD took no disciplinary action.

- Capt. Zelikov is also a subject in three cases, comprising five allegations, which were filed after this case:
 - #202003841 and #202004408 involve allegations of pepper spray and nightstick as club against Capt. Zelikov, also during the protest incident on May 30, 2020. The investigations in these cases are ongoing.
 - #202004049 involved allegations of threat of force and discourtesy against Capt. Zelikov, during a protest incident on June 6, 2020. In the online complaint, the complainant recounted that Capt. Zelikov was “extremely rude,” was not wearing a mask, and swore at him. The complainant asked Capt. Zelikov why his shield number was covered. Capt. Zelikov swore at the complainant again and told him to come over and touch his shield to see for himself. The complainant did not provide further statements to the CCRB and chose to withdraw the complaint.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- According to the Office of Court Administration, § 87(2)(b) has no history of convictions in New York City (Board Review 18).
- As of October 1, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Review 19).

Squad No.: 5

Investigator: Stephen J. DiFiore Inv. Stephen DiFiore October 6, 2020
Signature Print Title & Name Date

Squad Leader: Daniel Giansante IM Daniel Giansante October 16, 2020
Signature Print Title & Name Date

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____